

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

DAVID WHEELER,
Plaintiff,

vs.

MGM INTERNATIONAL, et al.,
Defendants.

2:11-CV-00099-PMP-PAL

ORDER

Before the Court for consideration is Defendants' fully briefed Motion to Dismiss Plaintiff's Second Amended Complaint (Doc. #20) filed August 10, 2011. For the reasons set forth in Defendants' Motion, the Court finds that Defendants' Motion to Dismiss must be granted.

Specifically, Plaintiff's Second Amended Complaint was filed in violation of Rule 15 of the Federal Rules of Civil Procedure. Regardless, as argued by Defendants in its Motion to Dismiss, Plaintiff's Second Amended Complaint essentially mirrors Plaintiff's First Amended Complaint which has already been dismissed by this Court with prejudice. Additionally, Plaintiff's Second Amended Complaint must be dismissed because Plaintiff has failed to exhaust his administrative remedies before the EEOC. Finally, as noted in Defendants' Reply Memorandum (Doc. #23), Plaintiff's § 1983 Claim fails because he has not alleged state action; Plaintiff's discrimination/harassment claim must be dismissed because

1 Plaintiff's Texas origin is not a "protective class"; and Plaintiff's retaliation claim
2 must be dismissed because he has failed to oppose Defendants' Motion for
3 Dismissal.

4 **IT IS THEREFORE ORDERED** that Defendants' Motion to Dismiss
5 Plaintiff's Second Amended Complaint (Doc. #20) is **GRANTED** and that
6 Plaintiff's Second Amended Complaint (Doc. #17) is hereby dismissed with
7 prejudice.

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9 DATED: September 7, 2011.

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PHILIP M. PRO
United States District Judge
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